



Shelter Care Hearing

Idaho Code § 16-1615; IJR 39

September 21, 2007

Purpose

- ✓ To decide whether there is reasonable cause to believe that the child is within the jurisdiction of the CPA. (A child is within the jurisdiction of the CPA if she/he is the victim of abuse, neglect, abandonment, lacks a stable home environment, is homeless or is the sibling of such a child and is living or having custodial visitation in the same household.) Idaho Code § 16-1603; IJR 39.
- ✓ If YES, to decide if it is in the child's best interest to remain in the home or to be placed in a place of shelter care pending the adjudicatory hearing.

Best Practice Recommendation:

Open the hearing by explaining its purpose in plain language.

- ✓ Within 48 hours (excluding weekends and holidays) after the child has been removed from the home. Idaho Code § 16-1608(2).
- ✓ OR within 24 hours (excluding weekends and holidays) after the alleged offender has been removed from the home. Idaho Code § 16-1608(3).

Best Practice Recommendation:

Avoid **continuances** if at all possible. If a continuance must be granted, the Court should consider whether it is the **first order sanctioning removal of the child from the home**. If so the **federal "contrary to the welfare/best interest" finding must be made**. If the continuance order mentions or refers to custody of the child it will be deemed to be the first order of removal. *See below*.

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers

Best Practice Recommendations:

- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. (Idaho Code § 16-1609(1)(c) requires notice to each parent.) If notice has been given and a parent does not appear, ensure that this is documented in the file and make appropriate findings in the shelter care order.
- ✓ Order paternity testing where appropriate.

- ✓ Child's guardian or other legal custodian, if applicable
- ✓ Assigned caseworker
- ✓ Child's tribal cCustodian, tribe, and tribal attorney

Best Practice Recommendation:

Determine whether further efforts are needed to ascertain whether the child is an Indian child and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act, 25 U.S.C. §§ 1901, *et seq.* If notice has been given and the tribe does not appear, ensure that there is an affidavit of service in the file and make appropriate findings in the shelter care order.

Who Should Be Present

Who Should Be Present

(Con't.)

- ✓ County Prosecutor or Deputy Attorney General
- ✓ Attorney for parents (separate attorneys if conflict warrants)
- ✓ Guardian *ad litem*, attorney for guardian *ad litem*, and/or attorney for child
- ✓ Age-appropriate child
- ✓ Court Reporter or suitable technology
- ✓ Security personnel
- ✓ Interpreter(s), if applicable

Appointments

- ✓ Appoint counsel for indigent parents if not already done. IJR 37(4).
- ✓ Appoint GAL for child, attorney for GAL and/or attorney for child. Idaho Code § 16-1614; IJR 37(1) – (3).

Best Practice Recommendation:

Make these appointments upon the filing of the CPA petition.

Federal Law Requirements

45 CFR 1356.21 (b)(1), (c) & (d)

- ✓ Is the child an Indian child? If so, consult ICWA requirements (*see* ICWA Benchcard).
- ✓ Best Interest/Contrary to the Welfare
 - If this is the *first order* sanctioning removal of the child from the home, the court must make a finding that removal of the child is in the **child's best interest** or that it is **contrary to the welfare of the child** to remain in the home.
 - The finding must be **case-specific** and **documented** in the order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
 - **If this finding is not made in the first order of removal, the child will not be eligible for federal IV-E or adoption funds, and the omission cannot be corrected at a later date to make the child eligible.**
- ✓ Reasonable Efforts
 - The Court must make a finding that IDHW either did, or, did not make **reasonable efforts to prevent removal of the child** from the home.
 - If the child was removed under **circumstances posing an imminent danger**, the court must find that the **department made reasonable efforts to prevent removal but was not able to safely provide preventive services.**
 - The finding must be made **within 60 days after removal** of the child from the home.

Best Practice Recommendation:

This finding should be made at the earliest opportunity, which may be the shelter care hearing

- The finding must be **case-specific** and **documented** in the court order. The finding can incorporate by reference an affidavit that describes the specific circumstances.
- **If this finding is not made within 60 days after the child's removal from the home, the child will not be eligible for federal funds, and the omission cannot be corrected at a later date to make the child eligible.**
- ✓ Stipulations – “Best Interest/Contrary to the Welfare” and “Reasonable Efforts” findings **must still be made.**





Shelter Care Hearing

State Law Requirements

- ✓ Findings – Prior to ordering that a child be placed in temporary shelter care, the court must make the following findings:
 - A CPA Petition has been filed.
 - There is reasonable cause to believe that the child is within the jurisdiction of the CPA.
 - IDHW made reasonable efforts, but they were not successful in eliminating the need for placement of the child in shelter care OR the department made reasonable efforts to prevent removal but was not able to safely provide preventive services.
 - The child cannot be placed in the temporary sole custody of a parent having joint legal or physical custody.
 - A protective order would not be sufficient to safeguard the child's welfare while allowing the child to remain in the home.
 - It is contrary to the welfare of the child to remain in the home, and/or it is in the best interest of the child to be placed in or remain in temporary care pending the adjudicatory hearing.

Best Practice Recommendations:

- ✓ For the shelter care order, use the form on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm> .
- ✓ If the order is entered based on the agreement of the parties, determine whether the agreement was entered into knowingly and voluntarily and whether it has a reasonable basis in fact. (If the stipulation is to dismiss, inquire whether there has been adequate investigation.)
- ✓ If the child is to be placed in temporary shelter care, inquire as to whether IDHW's placement is the least disruptive and most family-like setting that meets the needs of the child.
- ✓ If a child is placed in the custody of the agency, IDHW decides where to place the child, subject to judicial review. Under both state and federal law, there are substantial questions as to the nature and extent of that review. Please refer to the *Idaho Child Protection Manual* (which can be found on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm>) for more information.
- ✓ A child may not be placed out-of-state without a court order. The court should require that any out-of-state placement be made in accordance with the Interstate Compact on the Placement of Children, Idaho Code §16-2101, *et seq.* Refer to the *Idaho Child Protection Manual* (which can be found on the Idaho Supreme Court's website) for more information.
- ✓ Enter protective orders as appropriate (protective orders must be issued within 24 hours after the hearing).
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.